

matched by equal understanding and mutual respect. There is a plethora of civil wars, unrestrained by rules of the Geneva Convention, within which an overwhelming portion of the casualties are unarmed civilians who have no ability to defend themselves. And recent appalling acts of terrorism have reminded us that no nations, even superpowers, are invulnerable.

It is clear that global challenges must be met with an emphasis on peace, in harmony with others, with strong alliances and international consensus. Imperfect as it may be, there is no doubt that this can best be done through the United Nations, which Ralph Bunche described here in this same forum as exhibiting a "fortunate flexibility"—not merely to preserve peace but also to make change, even radical change, without violence.

He went on to say: "To suggest that war can prevent war is a base play on words and a despicable form of warmongering. The objective of any who sincerely believe in peace clearly must be to exhaust every honorable recourse in the effort to save the peace. The world has had ample evidence that war begets only conditions that beget further war."

We must remember that today there are at least eight nuclear powers on earth, and three of them are threatening to their neighbors in areas of great international tension. For powerful countries to adopt a principle of preventive war may well set an example that can have catastrophic consequences.

If we accept the premise that the United Nations is the best avenue for the maintenance of peace, then the carefully considered decisions of the United Nations Security Council must be enforced. All too often, the alternative has proven to be uncontrollable violence and expanding spheres of hostility.

For more than half a century, following the founding of the State of Israel in 1948, the Middle East conflict has been a source of worldwide tension. At Camp David in 1978 and in Oslo in 1993, Israelis, Egyptians, and Palestinians have endorsed the only reasonable prescription for peace: United Nations Resolution 242. It condemns the acquisition of territory by force, calls for withdrawal of Israel from the occupied territories, and provides for Israelis to live securely and in harmony with their neighbors. There is no other mandate whose implementation could more profoundly improve international relationships.

Perhaps of more immediate concern is the necessity for Iraq to comply fully with the unanimous decision of the Security Council that it eliminate all weapons of mass destruction and permit unimpeded access by inspectors to confirm that this commitment has been honored. The world insists that this be done.

I thought often during my years in the White House of an admonition that we received in our small school in Plains, Georgia, from a beloved teacher, Miss Julia Coleman. She often said: "We must adjust to changing times and still hold to unchanging principles."

When I was a young boy, this same teacher also introduced me to Leo Tolstoy's novel, "War and Peace." She interpreted that powerful narrative as a reminder that the simple human attributes of goodness and truth can overcome great power. She also taught us that an individual is not swept along on a tide of inevitability but can influence even the greatest human events.

These premises have been proven by the lives of many heroes, some of whose names were little known outside their own regions until they became Nobel laureates: Albert John Lutuli, Norman Borlaug, Desmond Tutu, Elie Wiesel, Aung San Suu Kyi, Jody Williams, and even Albert Schweitzer and

Mother Teresa. All of these and others have proven that even without government power—and often in opposition to it—individuals can enhance human rights and wage peace, actively and effectively.

The Nobel prize also profoundly magnified the inspiring global influence of Martin Luther King, Jr., the greatest leader that my native state has ever produced. On a personal note, it is unlikely that my political career beyond Georgia would have been possible without the changes brought about by the civil rights movement in the American south and throughout our nation.

On the steps of our memorial to Abraham Lincoln, Dr. King said: "I have a dream that on the red hills of Georgia the sons of former slaves and the sons of former slaveowners will be able to sit down together at a table of brotherhood."

The scourge of racism has not been vanquished, either in the red hills of our state or around the world. And yet we see ever more frequent manifestations of his dream of racial healing. In a symbolic but very genuine way, at least involving two Georgians, it is coming true in Oslo today.

I am not here as a public official, but as a citizen of a troubled world who finds hope in a growing consensus that the generally accepted goals of society are peace, freedom, human rights, environmental quality, the alleviation of suffering, and the rule of law.

During the past decades, the international community, usually under the auspices of the United Nations, has struggled to negotiate global standards that can help us achieve these essential goals. They include: the abolition of land mines and chemical weapons; an end to the testing, proliferation, and further deployment of nuclear warheads; constraints on global warming; prohibition of the death penalty, at least for children; and an international criminal court to deter and to punish war crimes and genocide. Those agreements already adopted must be fully implemented, and others should be pursued aggressively.

We must also strive to correct the injustice of economic sanctions that seek to penalize abusive leaders but all too often inflict punishment on those who are already suffering from the abuse.

The unchanging principles of life predate modern times. I worship Jesus Christ, whom we Christians consider to be the Prince of Peace. As a Jew, he taught us to cross religious boundaries, in service and in love. He repeatedly reached out and embraced Roman conquerors, other Gentiles, and even the more despised Samaritans.

Despite theological differences, all great religions share common commitments that define our ideal secular relationships. I am convinced that Christians, Muslims, Buddhists, Hindus, Jews, and others can embrace each other in a common effort to alleviate human suffering and to espouse peace.

But the present era is a challenging and disturbing time for those whose lives are shaped by religious faith based on kindness toward each other. We have been reminded that cruel and inhuman acts can be derived from distorted theological beliefs, as suicide bombers take the lives of innocent human beings, draped falsely in the cloak of God's will. With horrible brutality, neighbors have massacred neighbors in Europe, Asia, and Africa.

In order for us human beings to commit ourselves personally to the inhumanity of war, we find it necessary first to dehumanize our opponents, which is in itself a violation of the beliefs of all religions. Once we characterize our adversaries as beyond the scope of God's mercy and grace, their lives lose all value. We deny personal responsibility when we plant landmines and, days or years later,

a stranger to us—often a child—is crippled or killed. From a great distance, we launch bombs or missiles with almost total impunity, and never want to know the number or identity of the victims.

At the beginning of this new millennium I was asked to discuss, here in Oslo, the greatest challenge that the world faces. Among all the possible choices, I decided that the most serious and universal problem is the growing chasm between the richest and poorest people on earth. Citizens of the ten wealthiest countries are now seventy-five times richer than those who live in the ten poorest ones, and the separation is increasing every year, not only between nations but also within them. The results of this disparity are root causes of most of the world's unresolved problems, including starvation, illiteracy, environmental degradation, violent conflict, and unnecessary illnesses that range from Guinea worm to HIV/AIDS.

Most work of The Carter Center is in remote villages in the poorest nations of Africa, and there I have witnessed the capacity of destitute people to persevere under heart-breaking conditions. I have come to admire their judgment and wisdom, their courage and faith, and their awesome accomplishments when given a chance to use their innate abilities.

But tragically, in the industrialized world there is a terrible absence of understanding or concern about those who are enduring lives of despair and hopelessness. We have not yet made the commitment to share with others an appreciable part of our excessive wealth. This is a potentially rewarding burden that we should all be willing to assume.

Ladies and gentlemen:

War may sometimes be a necessary evil. But no matter how necessary, it is always an evil, never a good. We will not learn how to live together in peace by killing each other's children.

The bond of our common humanity is stronger than the divisiveness of our fears and prejudices. God gives us the capacity for choice. We can choose to alleviate suffering. We can choose to work together for peace. We can make these changes—and we must.

#### DIGITAL MEDIA CONSUMERS' RIGHTS ACT OF 2002

**HON. RICK BOUCHER**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, January 7, 2003*

Mr. BOUCHER. Mr. Speaker, I am pleased to join with my colleague from California, Mr. DOOLITTLE, in re-introducing the Digital Media Consumers' Rights Act (DMCRA).

The Digital Millennium Copyright Act of 1998 (DMCA) tilted the balance in our copyright laws too heavily in favor of the interests of copyright owners and undermined the long-standing fair use rights of information consumers, including research scientists, library patrons, and students at all education levels. With the DMCRA, we intend to restore the historical balance in our copyright law that has served our nation well in past years.

In order to reduce growing consumer confusion and to reduce a burden on retailers and equipment manufacturers caused by the introduction of so-called "copy protected CDs," we have also included in the bill comprehensive statutory provisions to ensure that consumers will receive adequate notice before they purchase these non-standard compact discs that they cannot record from them and that they

might not work as expected in computers and other popular consumer electronics products. Consumers shouldn't have to learn after they get home that the product they just purchased can't be recorded onto the hard drive of a personal computer or won't play in a standard DVD player or in some automotive CD players.

As my colleagues know, we introduced the bill at the end of last year to make clear that enactment of the legislation would be a high priority this year. We are now prepared to start the debate in earnest.

#### BACKGROUND AND NEED FOR LEGISLATION

Before describing the provisions of the bill in detail, I think it useful to provide a general overview of what has occurred over the past five years and why we need to recalibrate the DMCA in light of that experience.

As my colleagues may recall, in 1997 the Administration proposed legislation to implement two international copyright treaties intended to protect digital media in the 21st century. At the time, motion picture studios, record companies, book publishers, and other owners of copyrighted works indicated that the treaty implementing legislation was necessary to stop "pirates" from "circumventing" technical protection measures used to protect copyrighted works. As the bill was being formulated, it was clear that the proclaimed effort to crack down on piracy would have potentially harmful consequences for information consumers. Nonetheless, copyright owners asserted that the proposed legislation was not intended to limit fair use rights.

At the time, libraries, universities, consumer electronics manufacturers, personal computer manufacturers, Internet portals, and others warned that enactment of overly broad legislation would stifle new technology, would threaten access to information, and would move our nation inexorably towards a "pay per use" society. Prior to 1998, the American public had enjoyed the ability to make a wide range of personal non-commercial uses of copyrighted works without obtaining the prior consent of copyright owners. These traditional "fair use" rights have long been at the foundation of the receipt and use of information by the American public, and have been critical to the advancement of important educational, scientific, and social goals.

Congress has warned that overly broad legislation could have potentially harmful effects. Manufacturers of consumer electronic and other multiple purpose devices, for example, pointed out that a VCR or PC, among other popular devices, could be deemed to be an illegal "circumvention" device. In response to these concerns, the Administration limited the prohibition to devices that are primarily designed or produced for the purpose of circumventing; have only a limited commercially significant purpose or use other than to circumvent; or are marketed for use in circumventing. Even with this modification, however, the provision still contained a fundamental defect: it prohibited circumvention of access controls for lawful purposes, and it prohibited the manufacture and distribution of technologies that enabled circumvention for lawful purposes. In apparent response to expressions of concern, the Administration proposed a "savings" clause (ultimately enacted as section 1201(c)(1)), which states that section 1201 does not affect rights, remedies, limitations, or defenses to copyright infringement, including

fair use. However, as at least some of us understood at the time, and two courts have since confirmed, the fair use defense to copyright infringement actions is not a defense to the independent prohibition on circumvention contained in Chapter 12 of the DMCA. Since Chapter 12 actions are not grounded in copyright law, the so-called "savings clause" preserving fair use defenses to copyright infringement actions is meaningless in the context of actions under the DMCA.

Other problems were seen with the Administration's original draft. As Congress became aware that the Administration's proposal prohibited many other legitimate activities, our colleagues agreed to graft numerous exceptions onto section 1201. The House Committee on Commerce, in particular, sought to more carefully balance the interests of copyright owners and information consumers by including provisions dealing with encryption research, reverse engineering, and security systems testing. We can now see in retrospect, however, that these provisions did not go far enough.

Congress made other changes in an effort to right the balance. Principally at the urging of consumer electronics manufacturers, Congress adopted the so-called "no mandate" provision to give equipment manufacturers the freedom to design new products without fear of litigation. Section 1201(c)(3) provides that, with one exception (set forth in section 1201(k)), manufacturers of consumer electronics, telecommunications, and computing products are not required to design their products to respond to any particular technological protection measure. (The only requirement imposed on device manufacturers is to build certain analog VCRs to conform to the copy control technology already in wide use in the market.) The "no mandate" provision was essential to addressing the legitimate concerns of the consumer electronics, telecommunications, and computer industries, which feared that section 1201 otherwise might require VCRs, PCs, and other popular consumer products to respond to various embedded or associated codes, or other unilateral impositions by content owners without the assurance of corresponding protections for equipment consumers. Moreover, through legislative history, Congress also made clear that equipment manufacturers were free to make adjustments to products to remedy "playability" problems created by unilaterally developed technical measures.

In the end, however, these changes were not enough to achieve the appropriate level of balance. In the end, the DMCA dramatically tilted the balance in the Copyright Act towards content protection and away from information availability.

Given the breadth of the law and its application so far, the fair use rights of the public at large clearly are at risk. From the college student who photocopies a page from a library book for use in writing a report, to the newspaper reporter excerpting materials from a document for a story, to the typical television viewer who records a broadcast program for viewing at a later time, we all depend on the ability to make limited copies of copyrighted material without having to pay a fee or to obtain prior approval of the copyright owner. In fact, fair use rights to obtain and use a wide array of information are essential to the exercise of First Amendment rights. In my view,

the very vibrancy of our democracy is dependent on the information availability and use facilitated by the fair use doctrine.

Yet, efforts to exercise those rights increasingly are being threatened by the application of section 1201 of the DMCA. Because the law does not limit its application to circumvention for the purpose of infringing a copyright, all kinds of traditionally accepted activities may be at risk.

Consider the implications. A time may soon come when what is now available for free on library shelves will only be available on a "pay per use" basis. It would be a simple matter for a copyright owner to technically enshroud material delivered in digital format and then to impose a requirement that a small fee be paid each time the password is used so that a digital book may be accessed by a library patron. Even the student who wants the most basic access to only a portion of an electronic book to write a term paper would have to pay. The DMCA places the force of law behind these technical barriers by making it a crime to circumvent them even to exercise fair use rights. The day is already here in which copyright owners use "click on," "click through," and "shrink wrap" licenses to limit what purchasers of a copyrighted work may do with it. Some go so far as to make it a violation of the license to even criticize the contents of a work, let alone to make a copy of a paragraph or two.

To address these and other concerns that have been voiced since enactment of the DMCA, the bill we have introduced would amend sections 1201 (a)(2) and (b)(1) to permit otherwise prohibited conduct when engaged in solely in furtherance of scientific research into technological protection measures. Current law permits circumvention of technological protection measures for the purpose of encryption research. The bill expands the exception to include scientific research into technological protection measures, some of which are not encryption. This change is intended to address a real concern identified by the scientific community. It does not authorize hackers and others to post trade secrets on the Internet under the guise of scientific research, or to cloak otherwise unlawful conduct as scientific research.

Since September 11, 2001, we have all become more aware of the importance of improving the security of computer networks against hacking. Our computer scientists must be allowed to pursue legitimate research into technological protection measures to determine their strengths and shortcomings without fear of civil litigation or criminal prosecution under the DMCA. The public needs to know the genuine capabilities of the technological protection measures. The proposed amendment provides computer scientists with a bright line rule they can easily follow, and would encourage them to engage in research for the public's benefit.

The bill we have introduced does what the proponents of section 1201(c)(1) of the DMCA said it did, namely, to preserve the fair use rights of consumers under section 107 of the Copyright Act and under section 1201. (In 2001, for example, the presidents of the Business Software Alliance and the Interactive Digital Software Associations citing the "savings clause" stated in a letter to the editor of the Washington Post that "[t]he DMCA did nothing to upset existing fair use rules that still permit a variety of academic inquiries and

other activities that might otherwise be infringing.") The bill amends the "savings clause" to make clear that it is not a violation of section 1201 to circumvent a technological measure in connection with gaining access to or using a work if the circumvention does not result in an infringement of the copyright in the work. In short, if a consumer may make a fair use of a copyrighted work, he may gain access to it and then make use of it without liability under section 1201. At the same time, if his or her conduct does not constitute fair use under section 107, liability may attach under section 1201.

In this connection, I think it important to stress that, when the DMCA was being debated equipment manufacturers unsuccessfully sought to clarify the savings clause in section 1201. Since enactment of the DMCA, these same manufacturers have had to build business plans that incorporate copy protection technologies into their digital product offerings in order to ensure that content will be made available to consumers in digital formats. At the same time, these manufacturers have worked to ensure that those technologies are used in ways that are consistent with consumers' customary recording and viewing practices. I recognize that because the determination of whether or not a particular use is considered a "fair use" depends on a highly fact specific inquiry, it is not an easy concept to translate into a technological implementation. Our bill is not intended to encourage consumers to disable copy protection systems in order to gain increased access to protected works where the technology has been implemented in a manner that seeks to accommodate the consumer's fair use expectations. Instead, this proposal is in pursuance of a larger objective of ensuring that existing copy protection measures are implemented in ways that respect consumers' customary practices and ensuring that, as future technologies are developed, they incorporate means by which fair use of content can be made. As Congress demonstrated in developing section 1201(k) of the DMCA, there are ways to balance legislatively the interests of content owners and consumers when technological solutions that respect fair use practices can be agreed upon by all parties.

In addition to restrictions on their fair use rights, consumers face a new problem as record companies increasingly introduce into the market non-standard "copy-protected compact discs." As widely reported in the press, consumers have found that these ordinary-looking CDs do not play in some standard consumer electronics and computer products and that they cannot be copied on computer hard drives or in CD recorders. Without question, record companies should have the freedom to innovate, but they also have the responsibility to provide adequate notice to consumers about the "recordability" and "playability" of these discs. They have not done so. For that reason, I believe it is appropriate for Congress to now step in. Our bill will ensure that non-standard discs are properly labeled to give consumers adequate notice of all dysfunctions.

In this connection, I think it is important to note that the conferees to the DMCA expected all affected industries to work together in developing measures to protect copyrighted works. As the conferees pointed out, "[o]ne of the benefits of such consultation is to allow

testing of proposed technologies to determine whether there are adverse effects on the ordinary performance of playback and display equipment in the marketplace, and to take steps to eliminate or substantially mitigate those effects before technologies are introduced." That process does not appear to have been employed with regard to the new unilaterally developed methods being used to protect compact discs.

In closing, I think it important to stress that, for over 150 years, the fair use doctrine has helped stimulate broad advances in scientific inquiry and in education, and has advanced broad societal goals in many other ways. We need to return to first principles. We need to achieve the balance that should be at the heart of our efforts to promote the interests of copyright owners while respecting the rights of information consumers. The DMCRA of 2003 will restore that balance.

We urge our colleagues to join us as co-sponsors of this important legislation.

#### TRIBUTE TO MS. KATHERINE DUNHAM

#### HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, January 7, 2003*

Mr. CONYERS. Mr. Speaker, today, I rise to commemorate Katherine Dunham for her extraordinary contributions to dance, culture, history and the world. Ms. Dunham has been called the "Matriarch of black dance." Her unprecedented blend of cultural anthropology with the artistic genre of dance in the early 1930's, produced groundbreaking forms of movement, and in the United States, established black dance as an art form in its own right. Global awareness of folk dance in Haiti can be chiefly attributed to the work of Katherine Dunham.

It is important to share the history of this amazing woman. After various stays in Jamaica, Martinique, and Trinidad, Ms. Dunham arrived in Haiti in 1935. She chose to visit the Caribbean in order to study the intensity, depth and the African influence of the Caribbean dance culture. The Caribbean nations of Haiti and Jamaica provided Dunham with new insights, as the villagers began to trust her and invited her to join in some of their most sacred dance rituals. She would ultimately claim Haiti as her second home and even adopt their Vodum (or Voodoo) religion. She later chronicled much of her time spent in Haiti in a book entitled, *Island Possessed*. Shortly after leaving Haiti she completed a thesis on the dances of Haiti, entitled *Las Danzi de Haiti*. In 1983, the Center for Afro-American Studies at UCLA published a revised version, incorporating a long campaign of subsequent research. It was through her dance compositions that Ms. Dunham introduced the Haitian based vocabulary of movement to the world. This form of dance later became known as the Dunham technique.

Ms. Dunham's formal career began in 1931, when the "First Negro Dance Recital in America" was presented in New York. At the time she was a 21 year old University of Chicago student who also served as the group's choreographer, teacher and chief dancer. The multitude of roles that she played in this initial

endeavor were indicative of her great career which would span the next 50 years. In 1935, Ms. Dunham was given the opportunity to study both academic and practical aspects of dance when she received a Rosenwald fellowship which enabled her to undertake an anthropological study of dance in the Caribbean. As a result of her research, Ms. Dunham determined that African influences dominated three aspects of Black folk dance. These include: the incorporation of African religious dance into new ritual behaviors; the secularization of the African religious dance; and the interaction of African secular dance with European secular dance.

Upon returning to the United States, Ms. Dunham reconstituted her dance group focusing primarily on her Caribbean experiences, particularly in Haiti. She choreographed and produced numerous productions, *Pins and Needles*, *Tropics*, *Le Jazz Hot—From Haiti to Harlem*, *Cabin in the Sky*, *Tropical Revue*, *Carib Song*, *Bal Begre* which played in various locations, including New York and Los Angeles. Ms. Dunham's company also appeared in the film *Stormy Weather* with Lena Horne and Bill Robinson. Specifically, the dance troupe is featured in fog-drenched "Stormy Weather" dream sequence.

Later, Ms. Dunham returned to the international stage by opening Caribbean Rhapsody, *Tropics*, *Son*, *Chorus*, *Nanigo*, *Bahian*, *Shango*, *LaG Ya'*, *Rites of de Passage*, *Flaming Youth* and *Blues in Europe*. Ms. Dunham's success in Europe led to considerable imitation of her work in European revues. Her company also toured South America, Africa and Mexico. Ms. Dunham's dance troupe was so successful that it became the most widely recognized American dance company in the world. This distinction was later inherited by the Alvin Ailey American Dance Theater in 1970's.

The Dunham company made its last appearance in New York in 1962. It performed a production entitled *Bamboche!* which featured a contingent from the Royal Troupe of Morocco. In 1963 in Aida, Dunham continued to secure her place in artistic history by becoming the first African-American to choreograph for the Metropolitan Opera. Dunham first appeared in films in 1940 in *Carnival of Rhythm*. Her other film credits include *Cabin in the Sky*, *Star Spangled Rhythm*, *Casbah*, and *Pardon My Sarong*.

In 1945, the Katherine Dunham School of Arts and Research opened and was comprised of a Department of Theater, Cultural Studies and the Institute for Caribbean research. It offered two, three and five year courses leading to professional, teaching and research certificates. The faculty numbered thirty, and the school's curriculum included classes such as dance notation ballet, modern and primitive techniques, psychology and philosophy. It also offered courses in acting, music, visual design, history and languages. During the 1940's and 50's, Dunham's School of Dance became the premier training facility for African American dancers by providing instruction in dance described as "arresting," and "highly theatrical." The student body was interracial and numbered approximately four hundred. The cost to run this school was enormous and absorbed most, if not all of profits earned by Ms. Dunham. However, during its tenure some of its more famous students included Marlon Brando, James Dean and Shelley Winters.